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STATE FOR AF/W, INR/AA
DOE FOR CAROLYN GAY

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SUBJECT: KALU'S CORRUPTION TRIAL PITCHES EFCC AGAINST ATTORNEY
GENERAL

SENSITIVE BUT UNCLASSIFIED; HANDLE ACCORDINGLY

11. (U) SUMMARY: The Economic and Financial Crimes Commission (EFCC) trial of former Abia State Governor Orji Uzor Kalu has set the EFCC and Attorney General (AG), Michael Aondoaka, on a collision course. Aondoaka wants the EFCC to discontinue Kalu's trial in obedience to an earlier Abia State High Court ruling shielding Governor Kalu from arrest and trial. The clash between the EFCC and AG has also triggered extensive debate about whether the AG's action is justifiable. END SUMMARY.

12. (U) On July 27, the EFCC arraigned former Abia State Governor Orji Uzor Kalu before an Abuja High court on a 107 count charge of money laundering, official corruption and criminal diversion of public funds totaling about 23 million dollars (three billion naira). On August 5, Governor Kalu wrote a letter to President Umaru Yar'Adua, urging him to order the EFCC to discontinue the trial and complaining the EFCC failed to obey a May 31 Abia State High Court order to stay all actions on Kalu's case pending the determination of a motion before it. President Yar'Adua, replying through Aondoaka, promised Governor Kalu that the Abia High Court ruling would be respected. On September 3, Governor Kalu filed a motion with the Abuja High Court asking for an order to strike all EFCC charges against him and to vacate the terms and conditions of bail earlier granted by the court. During the September 5 hearing of Kalu's motion, an attorney representing Aondoaka urged the court comply with the Abia High Court ruling. Earlier, both the EFCC lawyer and the Justice Minister's attorney clashed over which of them had the power to prosecute Kalu's case. The matter was resolved in favor of the Attorney General.

13. (U) Since the September 5 face-off between the EFCC and the Attorney General, a heated debate has been going on among attorneys, civil society groups, and ordinary Nigerians concerning the perceived intervention of the Attorney General in the EFCC's investigations. Olisa Agbakoba, President of the Nigerian Bar Association (NBA), commended the Justice Minister for his commitment to the rule of law. Agbakoba said if the rule of law is supreme, then it is clear that a court order, whether rightly made or not, must be obeyed. He said it is not right for the EFCC to decide which court case to obey or disobey. To strengthen the rule of law and give meaning to obedience to court order, Agbakoba said, no criminal justice agency, including the police, should disobey any court ruling. Several opposition parties, including the Action Congress (AC), senior lawyers and civil society groups supported Agbakoba. They all agreed that the rule of law is paramount in the dispensation of justice and that the Attorney General has the power to take over or discontinue any criminal proceeding.

14. (U) Another knowledgeable source also defended the Attorney General's action. He said allowing the EFCC to violate court orders

under the pretext of fighting corruption could set a precedent that could threaten respect for the rule of law. He said the EFCC ought to challenge the Abia State Court ruling by appealing its decision, and/or seek to have the order vacated before continuing with Governor Kalu's case.

¶5. (U) Two prominent lawyers, Femi Falana, President of the West African Bar Association (WABA) and Frontline Human Rights activist Gani Fawehinmi however disagreed with Agbakoba. Relying on decided cases, Falana said the Attorney General has no power to usurp the judicial functions of the Abia State High Court. He said even if EFCC action amounted to contempt of the Abia High Court, it is only that court, and not the Attorney General, that can take the appropriate action under the law. Falana said Aondoaka's action on a matter pending before a competent court of law amounts to a "gross subversion of the rule of law which he claims to be defending". Fawehinmi, however, appears to be more concerned with the crusade to rid the country of corruption than the legal implications of Aondoaka's action. He called for Aondoaka's resignation, saying Aondoaka constitutes an obstacle to the crusade against corruption.

¶6. (SBU) COMMENT: Healthy debate over the legality of the Attorney General's actions no doubt strengthens Nigeria's democratic culture. The debate is not merely over the legality of the AG's actions; many see his actions as a move to protect Governor Kalu, a former PDP chieftain, who has only recently embraced President Yar'Adua's call for a government of national unity. Nigerians are voicing real concerns as to whether Nigeria's chief law officer, who is also a high ranking member of the PDP, can be impartial in criminal cases involving key members of his party or its supporters. END COMMENT.

HUTCHINSON